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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF ARIZONA
14 PHOENIX DIVISION

15 G & G Closed Circuit Events, LLC,
16 Plaintiff,
17
18 vs.
19 Oscar Alexander, et al.,
20 Defendants.

Case No.: 2:18-cv-02886-MTL

PLAINTIFF'S BRIEF IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT

21 **NOW COMES** the Plaintiff, G & G Closed Circuit Events, LLC, by and through
22 its attorneys of record, LAW OFFICES OF THOMAS P. RILEY, P.C. (Thomas P.
23 Riley, Esq.), and hereby files this Brief in Support of Plaintiff's Motion for Summary
24 Judgment against Defendants Oscar Alexander, individually and d/b/a Let It Roll Bowl,
25 Stacy Anderson, individually and d/b/a Let It Roll Bowl, and/or Let It Roll Bowl, LLC,
26 an unknown business entity d/b/a Let It Roll Bowl (hereinafter "Defendants"). For the
27 reasons set forth herein, as well as the reasons set forth in the supporting documentation
28 filed herewith, Plaintiff respectfully requests that its Motion for Summary Judgment be
granted.

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INTRODUCTION AND MATERIAL FACTS

Plaintiff was granted the exclusive nationwide commercial distribution and enforcement rights to the *Gennady Golovkin v. Saul Alvarez IBF World Middleweight Championship Fight Program*, telecast nationwide on September 16, 2017 (hereinafter referred to as the “Program”). (Ex. 2 at 2, ¶ 3). This Program included the main event between event between Golovkin (a/k/a “GGG”) and Alvarez (a/k/a “Canelo”), as well as all undercard bouts and commentary encompassed in the television broadcast. (*Id.*). Plaintiff entered into sub-licensing agreements with various commercial establishments to permit the public exhibition of the *Program*. (*Id.* at 2-3, ¶¶ 3, 8). Without the authorization of Plaintiff, Defendants unlawfully intercepted, received, and/or divulged the *Program* at their commercial establishment Let It Roll Bowl, operating at 8925 N. 12th Street, Phoenix, Arizona 85020. (Ex. 1 at 1); (Ex. 2 at 3, ¶ 7). While Defendants dispute their liability, there is no dispute that the *Program* was received and broadcast at Let It Roll Bowl, and that it was not ordered from Plaintiff. *See* (Ex. 3 at 3, 5 ¶¶ 1, 3, 13).

At all times relevant hereto, Defendant Let It Roll Bowl, LLC was the owner of the commercial establishment doing business Let It Roll Bowl. (Ex. 3 at 8, ¶ 29); (Ex. 9). At all times relevant hereto, Defendants Alexander and Anderson were members and officers of Let It Roll Bowl, LLC, (Ex. 8 at 2, 4); (Ex. 3 at 8, ¶ 31), and Defendant Anderson was the manager of Let it Roll Bowl. (Ex. 3 at 8, ¶ 30). Defendant Anderson was present and inside Let it Roll Bowl when the *Program* was broadcast, (Ex. 3 at 8, ¶¶ 32-33), and she personally informed employees and patrons of Let It Roll Bowl that the *Program* would be shown. (*Id.* at 10, ¶¶ 40-41). The Amazon Firestick purchased for Let It Roll Bowl was obtained via Defendant Anderson’s personal credit card. *See* (Ex. 6).

On September 16, 2017, investigator Amanda Hidalgo observed the unlawful exhibition of the *Program* at Let It Roll Bowl. (Ex. 1 at 1). Ms. Hidalgo was originally present at Let It Roll Bowl at 5:10 p.m., and returned at 6:20 p.m. (Ex. 1 at 1-2). The *Program* was displayed on five screens, including a pull-down projection screen. (Ex. 1 at 1); *see* (Ex. 5). Ms. Hidalgo observed the undercard bout between Diego De La Hoya and Randy Caballero, which was part of the *Program* herein. (Ex. 1 at 1); (Ex. 2 at 3, ¶ 7). Ms. Hidalgo noted that Let It Roll Bowl advertised the broadcast of the *Program* via Facebook. (Ex. 1 at 1, 4-5); (Ex. 11). In addition, Ms. Hidalgo paid a \$15.00 cover charge. (Ex. 1 at 1). Defendants admit to advertising the broadcast and to requiring a cover charge. (Ex. 3 at 4, 6, ¶¶ 10, 20). In fact, Defendants effectively planned an entire evening around the ability to broadcast Plaintiff's *Program*. (Ex. 7). Ms. Hidalgo rated the establishment as "good," and estimated its capacity to be 30. (Ex. 1 at 1). Defendants paid a fee of \$80.00 for the fight (Ex. 4). This was a *residential* fee. The minimum commercial fee, and the fee herein, was \$2,500.00 (Ex. 2 at 3, ¶ 8). Ms. Hidalgo noted that Defendants obtained the *Program* via a Slingtv. (Ex. 1 at 1). On the date of the broadcast herein, Let It Roll Bowl had Directv satellite service. (Ex. 3 at 7 ¶ 22).

LEGAL STANDARD

Summary judgment is appropriate when "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corporation v. Catrett*, 477 U.S. 317, 322 (1986). The burden then shifts to the non-movant to produce specific facts, supported by evidence in the record,

1 upon which a reasonable jury could find that there is a genuine issue of material fact for
 2 trial. *See Anderson*, 477 U.S. at 248. While the facts and all reasonable inferences are to
 3 be viewed in the light most favorable to the non-movant, *Anderson*, 477 U.S. at 255, the
 4 mere existence of some alleged factual dispute between the parties will not defeat a
 5 motion for summary judgment. *Id.* at 247-48.

7 ARGUMENT

8 I. THERE IS NO GENUINE ISSUE OF MATERIAL FACT REGARDING
 9 WHETHER DEFENDANTS UNLAWFULLY INTERCEPTED,
 10 RECEIVED, OR PUBLISHED THE PROGRAM AT THEIR
 COMMERCIAL ESTABLISHMENT.

11 A. Plaintiff's Program Was Intercepted or Received In Violation Of
 12 Federal Statutes And Plaintiff Is A Person Aggrieved Under Those
 13 Statutes.

14 47 U.S.C. § 605(a) provides:

15 No person not being authorized by the sender shall intercept any radio
 16 communication and divulge or publish the existence, contents, substance,
 17 purport, effect, or meaning of such intercepted communication to any
 18 person. No person not being entitled thereto shall receive or assist in
 19 receiving any interstate or foreign communication by radio and use such
 20 communication (or any information therein contained) for his own benefit
 21 or for benefit of another not entitled thereto. No person having received any
 22 intercepted radio communication or having become acquainted with the
 23 contents, substances, purport, effect, or meaning of such communication
 (or any part thereof) knowing that such communication was intercepted,
 shall divulge or publish the existence, contents, substance, purport, effect,
 or meaning of such communication (or any part thereof) or use such
 communication (or any information therein contained) for his own benefit
 or for the benefit of another not entitled thereto.

24 47 U.S.C. § 605(a). As early as 1939 the Supreme Court made clear that 47 U.S.C. § 605
 25 contains four separate provisions (then clauses) and that the specific language in each
 26 was deliberate. *See Weiss v. United States*, 308 U.S. 321, 329 (1939). In addition, 47
 27 U.S.C. § 553 provides, in pertinent part, that “[n]o person shall intercept or receive or
 28

1 assist in intercepting or receiving any communications service offered over a cable
2 system, unless specifically authorized to do so by a cable operator or as may otherwise be
3 specifically authorized by law.” 47 U.S.C. § 553(a)(1). The statutes provide statutory
4 protection against the theft of communications such as the Program herein. *See Directv,*
5 *Inc. v. Webb*, 545 F.3d 837, 844 (9th Cir. 2008).

6
7 47 U.S.C. §§ 605 and 553 are strict liability statutes. 47 U.S.C. § 605(e)(3)(C)(iii);
8 47 U.S.C. § 553(c)(3)(C) (allowing for reduction in damages when it is determined that
9 violator was “not aware and had no reason to believe that his acts constituted a violation .
10 . . .”); *Doherty v. Wireless Broadcasting Systems of Sacramento, Inc.*, 151 F.3d 1129, 1131
11 (9th Cir.1998); *J & J Sports Productions, Inc. v. Delgado*, 2012 WL 371630, at *3
12 (E.D.Cal. Feb. 3, 2012) (granting summary judgment for Plaintiff and holding that,
13 “[b]oth § 553 and § 605 are strict liability statutes”).
14

15
16 There is a split of authority among the district courts as to whether a violation may
17 implicate both 47 U.S.C. § 605 and 47 U.S.C. § 553. *See J & J Sports Productions, Inc.*
18 *v. Torres*, 2011 WL 6749817, at *4 (E.D.Cal. Dec. 22, 2011). While not specifically
19 addressed in the Ninth Circuit, *Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168 F.3d
20 347, 349, n.1 (9th Cir. 1999), many courts have found that section 605 applies to satellite
21 violations and section 553 applies to cable violations. *See Kingvision Pay Per View, Ltd.*
22 *v. Guzman*, 2008 WL 1924988, *1 (D.Ariz. April 30, 2008). In addition, while not
23 addressing the potential overlap of the statutes, the Ninth Circuit has conclusively
24 determined that 47 U.S.C. § 605, in particular, the “radio” provision of 47 U.S.C. § 605,
25 applies to satellite television signals. *See Webb*, 545 F.3d at 844 (“Still, it is clear from
26 the case law since the 1984 amendments that the “communications” protected by §
27
28

605(a) include satellite television signals.”). As noted above, Defendants had Directv satellite service on September 16, 2017, (Ex. 3 at 7, ¶ 22). and thus liability may be found under section 605. In addition, the signal originated as an encrypted, closed-circuit satellite signal. (Ex. 2 at 4-5, ¶ 11). Such a finding is also in keeping with the Ninth Circuit’s observation that obtaining direct evidence of signal interception is difficult. *Webb*, 545 F.3d at 844 (“The law does not require direct evidence to support a factual finding. Circumstantial evidence may be sufficiently persuasive. Signal piracy is by its very nature a surreptitious venture and direct evidence may understandably be hard to come by.”). “The lack of Plaintiff’s authorization and Defendant’s satellite service” is sufficient to establish a violation of section 605. *Joe Hand Promotions, Inc. v. Roseville Lodge No. 1293*, 161 F.Supp.3d 910, 918 (E.D.Cal. 2016).

“Any person aggrieved...may bring a civil action in a United States district court or in any other court of competent jurisdiction.” 47 U.S.C. § 605(e)(3)(A); 47 U.S.C. § 553(c)(1). “[T]he term ‘any person aggrieved’ shall include any person with proprietary rights in the intercepted communication by wire or radio[.]” 47 U.S.C. § 605(d)(6). Plaintiff had the exclusive nationwide distribution rights to the Program, (Ex. 2 at 2 ¶ 3), and thus is squarely a “person aggrieved” within the meaning of the statutes. *See J&J Sports Productions, Inc. v. Morales*, 2011 WL 6749080, at *3 (E.D.Cal Dec. 22, 2011).

B. Plaintiff Did Not Authorize Defendants To Broadcast The Program And Thus Defendants Are Liable To Plaintiff.

Plaintiff had the exclusive commercial distribution rights to the Program and any commercial establishment in this country that wished to distribute the Program was obligated to contract with Plaintiff. (Ex. 2 at 2-3, ¶¶ 3, 7). Defendants did not take this

1 route. (Ex. 2 at 2-3, ¶¶ 3, 7). The fact that the Program was broadcast at Defendants’
 2 establishment is established by the admission of Defendants, as well as the sworn
 3 affidavit of Ms. Hidalgo. *See* (Ex. 3 at 3, 5, ¶¶ 1, 3, 13); (Ex. 1 at 1-2); (Ex. 3 at 1).

4 To establish liability under 47 U.S.C. § 605, Plaintiff must establish that the
 5 Defendants unlawfully intercepted, received, published or divulged Plaintiff’s privileged
 6 communications. *See* 47 U.S.C. § 605(a). Because this is a strict liability statute, it is *not*
 7 necessary for Plaintiff to establish willfulness concerning the exhibitions in order to
 8 establish liability.¹ *See* 47 U.S.C. § 605(e)(3)(C)(iii). In that regard, even if Defendants
 9 were unaware of their violation, or if Defendants did not intend to broadcast Plaintiff’s
 10 Program unlawfully, they are still liable. *J & J Sports Productions, Inc. v. Mendoza-*
 11 *Gowan*, 2011 WL 1544886, at *6 (N.D.Cal. April 25, 2011) (emphasis added) (“[I]f it is
 12 later found that defendant acted unknowingly, damages . . . may be reduced *This*
 13 *point is irrelevant, however, for determining liability.*”)(emphasis added).

14 District Courts, including those in Arizona, have consistently granted summary
 15 judgment under similar factual situations. *E.g. J & J Sports Productions, Inc. v. Vargas*,
 16 2013 WL 1249206, at *2 (D.Ariz. March 27, 2013) (relying on similar evidence and
 17 concluding “Plaintiff has met its initial burden of pointing out to the Court the basis for
 18 the motion for summary judgment on the 605 claim and the elements of the 605 claim”)
 19 (there was no opposition filed in *Vargas*; nonetheless, Plaintiff was still obligated to
 20 satisfy its initial burden); *see also Morales*, 2011 WL 6749080 at *3.

21 The above analysis is sufficient to find Defendant Let It Roll Bowl, LLC liable.

22 ¹ As discussed in Section II, *infra*, Plaintiff contends that Defendants did act willfully;
 23 nonetheless, this is not relevant to a determination of liability.
 24

1 To hold an individual defendants liable when there is also a corporate defendant, Plaintiff
 2 must demonstrate either contributory infringement, i.e., that the defendants directly
 3 authorized the violation, *J & J Sports Productions, Inc. v. Circle R & R, Inc.*, 2019 WL
 4 937348, at *2, n.1 (S.D.Tex. Feb. 11, 2019), or that they are vicariously liable in that they
 5 “(1) . . . had a right and ability to supervise the infringing activities and (2) had an
 6 obvious and direct financial interest in those activities” *G & G Closed Circuit Events,*
 7 *LLC v. Miranda*, 2014 WL 956235, at *4-5 (D.Ariz. Mar. 12, 2014) (quotation omitted).

9 With respect to Defendant Anderson, there is clearly evidence of contributory
 10 infringement. As noted above, Defendant Anderson was the manager of Let it Roll Bowl,
 11 was present and inside Let It Roll Bowl when the Program was broadcast, personally
 12 informed employees and patrons of Let It Roll Bowl that the Program would be shown,
 13 and purchased the device through which Defendants unlawfully obtained the broadcast
 14 on her credit card. (Ex. 3 at 8, 10, ¶¶ 30, 32-33, 40-41) (Ex. 6). *See J & J Sports*
 15 *Productions, Inc. v. Pistol Pete’s Bar & Grill LLC*, 2019 WL 2958443, at *2 (D.Conn.
 16 June 13, 2018) (“contributory infringement[] . . . arises when the individual authorize[s]
 17 the violations”) (internal quotations omitted).

20 With respect to vicarious liability, at all times relevant hereto, Defendants
 21 Alexander and Anderson were officers of Let It Roll Bowl, LLC, (Ex. 3 at 8, ¶ 31), and,
 22 indeed, were the only members identified on the Arizona Corporation Commission
 23 records for Let It Roll Bowl, LLC. (Ex. 8 at 2, 4).² The status of Defendants with respect
 24 to the LLC and their activities related thereto is sufficient to hold them individually
 25

27 ² In view of her contributory infringement, it is not necessary to find Defendant Anderson
 28 vicariously liable. Nonetheless, both Defendants are liable under this test.

liable. *See Joe Hand Promotions, Inc. v. Upstate Recreation*, 2015 WL 685461, at *7 (D.S.C. Feb. 18, 2015); *Zuffa, LLC v. Trappey*, 2012 WL 1014690, at *5 (W.D.La. March 22, 2012) (“requisite control and financial interest necessary to establish” individual liability was conceded by admission of the individual defendants that they were “officers, directors, shareholders, and/or principals”); *Directv, Inc. v. Cibulka*, 2011 WL 3273058, at *1 (M.D.Pa. July 29, 2011) (defendant was the proprietor of the establishment and, as such, “ha[d] both the right and ability to supervise the distribution of ‘NFL Sunday Ticket’ to patrons, as well as a financial interest in attracting patrons to Sudsy’s through the distribution of ‘NFL Sunday Ticket.’”). In *Joe Hand Promotions, Inc. v. Tickle*, 2016 WL 393797 (M.D.Pa. Feb 2, 2016), the court addressed the issue of individual liability and found the individual defendant liable because:

First, in his official capacity . . . Defendant . . . had the “right and ability to supervise” the piracy at issue as a matter of law. It is not necessary that Defendant violated the law himself or that he was present for the violation. Based on Defendant’s official role at the establishment, he was responsible for the acts of his agents, his bartenders and other staff, and it is enough to hold him vicariously liable to the extent that one of his employees committed the piracy at issue.

Id. at *13; *see J & J Sports Productions, Inc. v. Mikhael*, 2016 WL 2984191, at *2 (C.D.Cal. May 19, 2016) (finding individual defendants (as well as corporate defendant) liable when they were members of the LLC (one was also the registered agent).

To the extent Defendants may argue that either Program was lawfully obtained from their satellite provider, this argument has repeatedly been raised and rejected. *See J & J Sports Productions, Inc. v. Jorkay, LLC*, 2013 WL 2629461 (E.D.N.C. June 11, 2013). In *J & J Sports Productions, Inc. v. Rubio*, 2017 WL 3234939, at *2 (D.Ariz. July 31, 2017), this Court held:

Defendants at no point deny that the program was broadcast inside Tacos El Grullo but maintain that they did not violate § 605(a) because they were permitted to by way of their Sky Television subscription. The argument is without merit. The fact that Defendants may have somehow legally purchased a Sky Television subscription—a fact that is far from established—does not immunize them from liability for broadcasting the event to the Tacos El Grullo patrons without obtaining authorization from Plaintiff, the exclusive licensee.

C. Defendants’ Purported Defenses Fail.

Defendants may argue that the piracy statutes do not apply in this case because they obtained the broadcast via Sling TV and because they lawfully obtained an Amazon Firestick. With respect to the devices themselves, Defendants have reached the unsupportable conclusion that simply because a device that they utilized was obtained lawfully, somehow everything they did with those devices was *per se* lawful. In *J & J Sports Productions, Inc. v. Salinas*, Case No. 17-cv-02100 (Dkt. No. 22 at 15, n. 24, S.D.Tex. Dec. 4, 2018) (Ex. 12), which involved a Slingbox, defense counsel herein made the same argument. In rejecting the argument, the *Salinas* Court noted:

This argument is unsupported by any legal authority and does not withstand scrutiny. The mere fact that a device was purchased lawfully and is used to perform a function it was designed to perform does not immunize use of that device to violate the law.

(*Id.* at 15, n.24). Defendants may also argue that they were “authorized” to broadcast the *Program*. Notably, however, Defendants will not be able to provide any evidence of authorization. Rather, Defendants will speculate that *because* they were able to obtain and show the *Program*, they were necessarily authorized to do so. To the extent Defendants may argue that the *Program* was lawfully obtained via Sling, any such argument fails. Indeed this is confirmed by the Sling TV terms of use, which expressly note that Sling is only available for *residential* use, and which even goes so far as to

1 warn users not to commit piracy. (Ex. 10 at 3, ¶ I.3 (Private and Personal Use Only –
 2 “Our services, including all content viewed through our Services, are solely for private,
 3 personal, *non-commercial* use, not for use in the operation of a business”)
 4 (emphasis added); ¶ VII.4 (Warning against Piracy and Infringement). To the extent
 5 Defendants may object to the Sling TV terms of use, in *J & J Sports Productions, Inc. v.*
 6 *Brewster "2" Cafe, LLC*, 2014 WL 4956501 (E.D.Ark. Oct. 2, 2014), the plaintiff asked
 7 the Court to take judicial notice of Comcast Terms of Service; defense counsel herein
 8 objected. In taking judicial notice, *Brewster* Court held:

11 But it is Brewsters that is claiming it was authorized by Comcast to exhibit
 12 the Program and Brewsters. . . . Brewsters cannot credibly claim it was
 13 authorized by Comcast to exhibit the Program and then claim, without
 14 supporting evidence, that it had no knowledge of Comcast's Terms and
 15 Conditions as applicable to its account.

16 *Id.* at *3, n.2. Irrespective of the Sling TV Terms of Use, in light of the fact that Plaintiff
 17 had the exclusive nationwide commercial rights, (Ex. 2 at 2, ¶ 3), and Defendants
 18 broadcast the *Program* without Plaintiff’s authorization, there liability is established. This
 19 is further confirmed by the fact that Defendants paid \$80.00, (Ex. 4) when the
 20 commercial fee was \$2,500.00 (Ex. 2 at 3, ¶ 8).

21 Defendants may also attempt to rely on the case of *Premium Sports Inc. v.*
 22 *Connell*, 2012 WL 691891 (S.D.N.Y. March 1, 2012), to suggest that an interception *per*
 23 *se* is required for liability under 47 U.S.C. § 605. *See Answer* at 3 (Dkt. No. 3). *Connell*
 24 not only misstates 47 U.S.C. § 605, it based its holding on a Sixth Circuit case that the
 25 Sixth Circuit itself had rejected. First *Connell* quoted section 605 with an internal ellipsis,
 26 *Connell*, 2012 WL 691891 at *2, and the part of the statute that *Connell* replaced with an
 27 internal ellipsis was the part that prohibits receipt and use of a communication. *See* 47
 28

U.S.C. § 605(a) (third sentence). Next, *Connell* based its decision on *Cablevision of Michigan, Inc. v. Sports Palace*, 27 F.3d 566 (Table), 1994 WL 245584 (6th Cir. 1994), an unpublished case that the Sixth Circuit *itself* had already debunked:

Time Warner's citation to [*Cablevision*] is unavailing. . . .*Cablevision* cited [*Smith v. Cincinnati Post & Times-Star*, 475 F.2d 740, 741 (6th Cir.1973)] for the proposition that when “there [is] no interception, the mere fact that the bar divulged or published [a similar boxing match] cannot make it liable under Section 605(a).” *See id.* at *4 (citing *Smith*, 475 F.2d at 741) (original alterations and internal quotation marks omitted).

For the reasons previously discussed, however, this proposition is not a correct statement of the law. *Smith*'s holding is limited to an interpretation of the second { "pageset": "Sd9 sentence of § 605(a), not the entire provision. As a result, *Cablevision*'s reliance on the broad dicta from *Smith* is misplaced

Nat'l. Satellite Sports, Inc. v. Eliadis, Inc., 253 F.3d 900, 915-16 (6th Cir. 2001) (citations in original, underline emphasis added).³ Next, as a practical matter, this is clearly not the law in the Ninth Circuit. *See Webb*, 545 F.3d at 848.

To the extent Defendants may suggest that this is an internet case⁴ and that the piracy statutes do not apply to internet signals, Defendants' base their arguments on outdated law. For example, in their Answer, Defendants point to *Joe Hand Promotions, Inc. v. Cusi*, 2014 WL 1921760 (S.D.Cal. May 14, 2014). (Dkt. No. 3 at 4). First, Defendants misunderstand the holding of *Cusi*. While *Cusi* said that it was “skeptical that

³ Defense counsel may also attempt to rely on *Connell* to argue there can be no liability under 47 U.S.C. § 553. Setting aside the errors in *Connell*, it did not address section 553, which is also clear on its face that more than interceptions are prohibited. 47 U.S.C. § 553(a) (“[n]o person shall intercept *or* receive”) (emphasis added).

⁴ As noted above, this case properly falls within the ambit of 47 U.S.C. § 605 due to Defendants' satellite television service and thus the internet issue is not implicated.

1 feeds received over the internet from a third party violate Sections 553 or 605,” 2014 WL
2 1921760 at *3, n.4, it did not reach the ultimate issue. Moreover, a recent case from the
3 Southern District of California rejects *Cusi. G & G Closed Circuit Events, LLC v.*
4 *Gonzalez Ruiz*, 2019 WL 1976486 (S.D.Cal. Mar. 14, 2019). Other recent cases have also
5 rejected Defendants’ underlying belief. *E.g. J & J Sports Productions, Inc. v.*
6 *Jaschkowitz*, 2016 WL 2727015, at *3-4 (E.D. Ky. May 6, 2016); *J & J Sports*
7 *Productions, Inc. v. Vega*, 2016 WL 4132290 (W.D.Ark. Aug. 2, 2016); *Joe Hand*
8 *Promotions, Inc. v. Maupin*, 2016 WL 6459631 (E.D.N.Y. Oct. 31, 2016); *but see Joe*
9 *Hand Promotions, Inc. v. Spain*, Case No. 2:15-cv-00152-PHX-SMM (D.Ariz. Aug. 5,
10 2016) (Dkt. No. 39) (Ex. 13). In *Spain*, this Court did agree that internet signals are not
11 covered. Plaintiff respectfully submits that the *Spain* holding is erroneous for numerous
12 reasons. In an event, while *Spain* did address the internet question, it did not undertake a
13 detailed analysis of the issue, and the more recent cases noted above provide a better
14 analysis of the issue. Moreover, *Spain* relied on facts and circumstances not present
15 herein, including the Court’s conclusion that the defendants had lawfully purchased the
16 Program from “an authorized distributor of the Program.” (Ex. 13 at 5-7). At best, herein,
17 Defendants may establish that they lawfully purchased a *device*; that is a far cry from
18 establishing a lawful purchase of the *Program*, let alone one from an authorized
19 distributor. Indeed, given both Plaintiff’s exclusive commercial distribution rights and
20 Sling’s prohibition on commercial use, that is not possible.

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26 II. PLAINTIFF IS ENTITLED TO STATUTORY DAMAGES AND
27 ENHANCED DAMAGES.
28

1 A party aggrieved under section 605 may, at its discretion, recover either actual or
 2 statutory damages. 47 U.S.C. § 605(e)(3)(C). Plaintiff elects to recover statutory damages
 3 pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II). The amount of statutory damages to which
 4 Plaintiff is entitled for each violation of this section shall be not less than \$1,000.00 nor
 5 more than \$10,000.00. *Id.* Next, Plaintiff respectfully and additionally requests
 6 “enhanced” damages pursuant to 47 U.S.C. § 605(e)(3)(C)(ii), which permits this Court
 7 to award up to \$100,000.00 in additional damages where “the violation was committed
 8 willfully and for purposes of commercial advantage or private financial gain[.]” *Id.*
 9 Plaintiff requests \$60,000 in total damages (\$10,000 in statutory damages and a \$50,000
 10 enhancement). While \$60,000 is a significant amount, in view of the egregious nature of
 11 the violation – Defendants planned an entire evening around Plaintiff’s *Program* – the
 12 award is justified.

15 A. Congress Considers Piracy To Be Theft And Significant Damages
 16 Are Necessary To Curb The Pervasive Practice Of Piracy.

17 When Congress enacted the Communications Act, it was keenly aware of the
 18 detrimental impact of piracy, including theft of closed-circuit programming, such as the
 19 Program. In fact, Congress has equated a violation of the statutes to a theft of service.
 20 *Cable Communications Policy Act of 1984, House Report No. 98-934, 5 U.S. Cong.*
 21 *News.* ’84 Bd. Vol. -6, 4655, 4720 (emphasis added). In assessing damages, Plaintiff
 22 requests that the Court take the purpose of the legislation into account and recognize that
 23 an “award of modest damages does not satisfy the purpose of the legislation.” *J & J*
 24 *Sports Productions, Inc. v. Brazilian Paradise*, 789 F.Supp.2d 669, 677 (D.S.C. 2011).

1 A primary goal of piracy awards is deterrence. *See Joe Hand Promotions, Inc. v.*
 2 *Pinkhasov*, 2012 WL 3641451, *1 (D.Ariz. Aug. 24, 2012) (awarding maximum
 3 statutory damages of \$10,000 “[a]fter considering the goal of deterring cable piracy”);
 4 *J & J Sports Productions, Inc. v. Barrio Fiesta of Manila Restaurant, LLC*, 2012 WL
 5 2919599, *2 (D.Ariz. July 17, 2012) (“Plaintiffs correctly note that enhanced damages
 6 are desirable in many cases because of their tendency to deter future violations.”). In
 7 addition, the statutes contemplate both specific and general deterrence.
 8

9 B. Statutory Damages And Enhanced Statutory Damages.

10 The Ninth Circuit has not established a formula for calculating damages under 47
 11 U.S.C. § 605, and this Court has discretion in awarding statutory and enhanced statutory
 12 damages. *J & J Sports Productions, Inc. v. Guzman*, 2008 WL 2682605, *4-5 (E.D.Cal.
 13 July 1, 2008); *see Kingvision Pay-Per-View, Ltd. v. Gutierrez*, 544 F.Supp.2d 1179, 1184
 14 (D.Colo. 2008) (noting that some courts award damages based on the number of patrons
 15 present whereas others award a flat sum per violation). While courts have looked to the
 16 licensing fee to determine an appropriate statutory damages award, this method
 17 undervalues the Program and fails to compensate Plaintiff adequately. *See Kingvision*
 18 *Pay-Per-View, Ltd. v. Jasper Grocery*, 152 F.Supp.2d 438, 442 (S.D.N.Y. 2001). ”). In
 19 *Pinkhasov*, this Court awarded \$10,000 in statutory damages. 2012 WL 3641451 at 1. In
 20 so doing, the *Pinkhasov* Court noted that, “[t]here is no evidence that defendant is a
 21 repeat illegal interceptor of programming, and there is no evidence that plaintiff incurred
 22 significant damages. There is also no evidence that defendant charged a premium for
 23 drinks or food.” *Id.* The Court may reach the same conclusion here.
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As detailed above, Defendants planned an entire evening around the broadcast of the *Program*. This included advertising, a cover charge, registration forms, and even setting up a projection screen. In light of those actions, there can be no question Defendants acted willfully and for the purposes of commercial advantage⁵, and this alone is sufficient to justify a significant enhancement. Next, the testimony of Mr. Gagliardi (Ex. 2 at 3-6, ¶¶ 9-10, 14-17), and case law support a finding that Defendants' actions were willful and for the purpose of commercial advantage. *See J & J Sports Productions, Inc. v. Marcaida*, 2011 WL 2149923, at *3 (N.D.Cal. May 31, 2011); *Joe Hand Promotions, Inc. v. Wing Spot Chicken & Waffles*, 920 F.Supp.2d 659, 668-69 (E.D.Va. 2013).

In *J & J Sports Productions, Inc. v. Meza Jimenez*, 2018 WL 317288 (D.Ariz. Jan. 8, 2018), the District of Arizona awarded \$10,000 in statutory damages and \$20,000 in enhanced statutory damages against an establishment that showed the program on one television to 45 patrons. *Id.* at *2. In *Meza Jimenez* there was one prior offense. Here, while there is no prior offense, that is more than offset by the steps taken by Defendants to take advantage of Plaintiff's programming. In *McCausland*, the district court awarded \$10,000 in statutory damages and \$30,000 in enhanced damages. *Id.* at *3-4.. In *McCausland*, there were between 10-17 patrons and the program was shown on one television; the commercial fee was lower (\$2,200). *McCausland*, 2012 WL 113786 at *1.

⁵ The fact that Defendants may not have *profited* is not the issue. The statute requires that they act “for purposes of direct or indirect commercial advantage or private financial gain.” 47 U.S.C. § 605(e)(3)(C)(ii) (emphasis added). They cannot escape liability for their actions by being bad at their business.

1 However, unlike in this case, there was no advertising and no cover charge. Nonetheless,
2 the Court awarded \$30,000 in enhanced statutory damages, stating:

3 Defendants' actions, although willful, *had a relatively small impact*: they
4 occurred in a small geographic location; they occurred in a small
5 establishment; there is no evidence that Defendant is a repeat offender; and
there is *no evidence that Defendants advertised or charged cover*.

6 *McCausland*, 2012 WL 113786 at *4 (emphasis added).

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8 III. PLAINTIFF IS ENTITLED TO COSTS AND REASONABLE
ATTORNEYS' FEES.

9 47 U.S.C. § 605 mandates an award of costs and attorneys' fees to an aggrieved
10 party. Specifically, the section states that the Court "*shall direct* the recovery of full
11 costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails."
12 47 U.S.C. § 605(e)(3)(B)(iii) (emphasis added). Pursuant to Civil L.R. 54.1 and 54.2,
13 Plaintiff requests that it be granted 14 days from the entry of judgment to submit its
14 Motion for costs and attorneys' fees.
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16

17 **CONCLUSION**

18 Based on the foregoing, summary judgment should be entered in Plaintiff's favor
19 with respect to Plaintiff's claims under 47 U.S.C. § 605 and Plaintiff should be awarded
20 the damages requested herein.
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22

23 WHEREFORE, Plaintiff respectfully requests that Honorable Court grant
24 Plaintiff's Motion for Summary Judgment, and order such other relief as this Court
25 deems just and proper.
26

27 Dated: December 20, 2019

/s/ Thomas P. Riley

LAW OFFICES OF THOMAS P. RILEY, P.C.

By: Thomas P. Riley
Attorneys for Plaintiff
G & G Closed Circuit Events, LLC

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